

App. No. 10/070289  
Office Action Dated March 10, 2004  
Amd. Dated July 12, 2004

### **REMARKS**

Reconsideration is respectfully requested in view of the above amendments and following remarks. Claims 1, 6-8, 13 and 14 are hereby amended. Please note claims 13 and 14 were amended within the preliminary amendment, which was filed at the same time the present application was filed to remove multiple dependencies. Claims 13 and 14 were amended to each depend from claim 7, therefore, claim 14 should also be considered. No new matter has been added. Claims 1-14 are pending.

Applicant hereby encloses a Supplemental Application Data Sheet in accordance with CFR 37 § 1.76 (c), to update information previously submitted in the Application Data Sheet and the Combined Declaration & Power of Attorney. The Supplemental Application Data Sheet is hereby submitted to correct the title, which was spelt incorrectly within each of the above referenced documents, submitted to the Patent Office. No new matter has been added.

Claims 1, 6-8, 13 and 14 have been amended to remove the reference characters corresponding to the drawing elements. No new matter has been added.

The specification has been amended at page 1, line 5, line 11 and line 13 to more clearly recite "they touch" and "it touched good". No new matter has been added.

### **Claim rejections - 35 U.S.C. § 112**

Claims 7-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claims 7 and 8 have been amended to more clearly recite that the dry powder of polyacrylamide hydrogel is proportional to the volume of the shell. Therefore, for every 100ml volume of shell, 2.5-7 grams of dry powder is added. By making this

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amendment, applicant does not concede the correctness of the rejection of the claims as previously submitted. Withdrawal of this rejection is respectfully requested.

**Claim rejections - 35 U.S.C. § 103**

Claims 1-3, 6-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Purkait (EP 0 784 987 A2). Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Purkait (EP 0 784 987 A2) in view of Purkait (US 5,941,909) and further in view of Pinchuk et al. (US 5,376,117). Applicant respectfully traverses the rejections made by the Examiner for at least the reasons discussed below.

A major concern when implanting gels into the human body is the level of toxins that will be released into the human body. There are several ways to approach the area for reducing the toxin level. Purkait addresses the reduction of toxins in one way, through the purification process of polyacrylamide (column 7, lines 42-43). The present invention designates chemical ingredients and percentages. The selected chemical ingredients and percentages of the present invention produce a low toxin level within the gels; therefore, the gels do not need to be purified as they are in Purkait. Purkait fails to suggest percentages or amounts of the chemical ingredients.

For at least these reasons discussed above, the cited art fails to render the present invention obvious under 35 U.S.C. 103, as neither Purkait (EP 0 784 987 A2), Purkait (US 5,941,909) nor Pinchuk, alone or in combination, disclose or render obvious the above features of claim 1 and 7. It is therefore applicant's belief that claims 1 and 7 are allowable over the cited references. For at least the reasons that claims 2-6 depend directly or indirectly from claim 1, and claims 8-14 depend either directly or indirectly from claim 7, it is applicant's belief that those claims are also allowable. By making this

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amendment, applicant does not concede the correctness of the rejection of the claims as previously submitted. Withdrawal of this rejection is respectfully requested.

In view of the above, favorable reconsideration in the form of a notice of allowance is requested. Any questions or concerns regarding this communication can be directed to the undersigned at (612) 336.4789, or Applicants' primary attorney-of-record, Michael D. Schumann (Reg. No. 30,422), at (612) 336.4638.


Respectfully submitted,



Dated: July 12, 2004

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